

In re Interest of Sandrino T.

Caselaw No.

295 Neb. 270

Filed on

Friday, December 9, 2016

SUMMARY: Sandrino T. and Remus M. were each charged in the Lancaster County Separate Juvenile Court with six counts in connection with ATM skimming. Specifically, it was alleged that the juveniles were involved in a scheme to collect credit and debit card information via cameras and skimming devices placed on the ATMs. The State produced evidence linking the plan to a nation-wide operation made up primarily of Romanians brought to the United States to steal credit and debit information. After dental examinations to determine their age which was unknown, it was determined that Remus was between 16.5 and 17 years old and Sandrino between 16.5 and 17.5 years old, but possibly as old as 18. The State moved to transfer the cases to the county court for arraignment and further proceedings. The youth appealed the transfers asserting that the juvenile court erred in granting the transfer to county court without sufficient evidence.

In its review, the Supreme Court considered whether the transfer orders appealed by the juveniles were final and appealable orders, which the appellants argue to be the case. Sandrino and Remus argued that by deleting the non-final order language from § 29-1816, the Legislature intended to authorize interlocutory appeals from orders ruling on motions to transfer from criminal court to juvenile court, and they further argue that the Court should judicially construe § 43-274(5), the new statute enacted by L.B. 464, to also authorize interlocutory appeals from orders transferring cases from the juvenile court to the criminal court.

However, the Court disagreed under the provisions of L.B. 464 and the recently decided *In re Interest of Tyrone K.*, ___ N.W.2d___ (2016). The Court doubled down on its rationale in *Tyrone K.* which found “nothing which permits the conclusion that the Legislature intended . . . to affirmatively confer a statutory right of interlocutory appeal from an order on a motion to transfer a case from criminal court to juvenile court, or vice versa.” Instead, the court restated that the “familiar task” of “applying Nebraska’s final order statute, § 25-1902, to determine whether transfer orders are final and appealable” remains with the judiciary since there is no evidence that the Legislature intended otherwise.

The Court then proceeded with an analysis of final order review under § 25-1902 and *Cattle Nat. Bank & Trust Co. v. Watson*, 293 Neb. 943 (2016). The Court concluded that, per these sources, the orders at issue are final and appealable only if they were made during special proceedings and affected substantial rights. To this end, juvenile court delinquency is regarded as a special proceeding so the focus then turns to the orders effect on substantial rights: Sandrino and Remus argue that substantial rights were affected essentially due to the resulting inability to maneuver legally at will. The Court counters that a substantial right is affected if an order affects the subject matter of the litigation, not when the alleged right can be effectively vindicated in an appeal from the final judgment.

As for Sandrino and Remus’ argument that, absent the ability to appeal immediately, they

would be denied the ability to appeal the orders at the conclusion of the criminal proceedings the Court responded that there is not statutory reshuffling in L.B. 464 or its effects that would hold the orders immune from appellate review on direct appeal following judgment.

Finally, the appellants offered a last ditch argument that they have a substantial right to proceed in juvenile court and receive the rehabilitative services available in that forum. The Supreme Court also blocks this approach by stating that there is no constitutional right to proceed in juvenile court rather than criminal court and that "the loss of access to juvenile court itself does not affect a substantial right," citing *State v. Meese*, 257 Neb. 486 (1999) and *In re Interest of Tyrone K.*, respectively.

Thus, the Supreme Court concluded that the juvenile court's order transferring Sandrino's and Remus' cases from juvenile court to county court are not final, appealable orders and, as a result, sufficient jurisdiction is not available to hear the merits of their appeals. The Court consequently dismissed the appeals.
